

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
REGIONET WIRELESS LICENSE, LLC)	File Nos. 853314-29, 853333-34
)	
Granted Applications to Provide Automated)	
Maritime Telecommunications System Stations)	
at Various Location in the United States)	

MEMORANDUM OPINION AND ORDER

Adopted: October 10, 2002

Released: October 25, 2002

By the Commission:

1. *Introduction.* The Commission has before it an application for review, filed on January 17, 2002, by Warren C. Havens (Havens). Havens seeks review of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division (Division) *Order on Further Reconsideration* that denied the petition for reconsideration he filed in the captioned proceeding.¹ Havens had petitioned the Division to reconsider its decision to dismiss on procedural grounds his petition to reconsider the grant of the above-captioned applications to Regionet Wireless License, LLC (Regionet) to operate Automated Maritime Telecommunications System (AMTS)² stations on AMTS channel block B at various locations in the United States. For the reasons that follow, the application for review is denied.

2. *Background.* On May 17, 2000, Regionet filed applications to serve, *inter alia*, the Cape Fear and Haws Rivers;³ Cooper, Congaree, Broad and Saluda Rivers;⁴ and Savannah River⁵ on AMTS channel block A (217.5125-217.9875 MHz).⁶ On June 9, 2000, Regionet filed applications to serve, *inter alia*, the Cape Fear and Haws Rivers;⁷ Cooper, Congaree, Broad and Saluda Rivers;⁸ and Savannah River⁹ on AMTS channel block B (217.0125-217.4875 MHz).¹⁰ On July 6, 2000, Havens filed a petition to deny

¹ Regionet Wireless Licensee, LLC, *Order on Further Reconsideration*, 16 FCC Rcd 22097 (WTB PSPWD 2001) (*Order on Further Reconsideration*).

² An AMTS is a specialized system of coast stations providing integrated and interconnected marine voice and data communications, somewhat like a cellular phone system, for tugs, barges, and other vessels on waterways. Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, RM-5712, 6 FCC Rcd 437, 437 ¶ 3 (1991).

³ File Nos. 853265-68.

⁴ File Nos. 853259-64.

⁵ File Nos. 853269-70.

⁶ See *Public Notice*, Report No. 2096 (rel. June 6, 2000).

⁷ File Nos. 853314-17.

⁸ File Nos. 853324-29.

⁹ File Nos. 853333-34.

¹⁰ *Public Notice*, Report No. 2099 (rel. June 27, 2000).

Regionet's channel block A applications. No petitions to deny were filed against the above-captioned channel block B applications. On November 8, 2000, the Division granted Regionet's applications to serve the Cape Fear and Haws Rivers; Cooper, Congaree, Broad and Saluda Rivers; and Savannah River on AMTS channel block B.¹¹

3. On December 14, 2000, Havens filed a petition for reconsideration of the grant of the channel block B applications. In an *Order on Reconsideration*, released on September 7, 2001, the Division dismissed the petition¹² because Havens neither was a party to the proceeding prior to the filing of the reconsideration petition, nor demonstrated that there was good reason why it was not possible for him to participate in the earlier stages of the proceeding, as required by Section 1.106(b)(1) of the Commission's Rules.¹³ Contrary to Havens's contention, the Division stated that his petition to deny Regionet's channel block A applications could not be extended, along with the arguments raised therein, to the separate proceeding regarding Regionet's channel block B applications.¹⁴ The Division also disagreed with Havens's assessment of a January 3, 2001 decision by the Division's Policy and Rules Branch (Branch) granting Regionet an extension of time to file oppositions to Havens's December 14, 2000 petition and to Havens's petition for reconsideration of the dismissal of his applications to serve a portion of the Arkansas River.¹⁵ Specifically, the Division rejected Havens's contention that the Branch's rationale in reaching this decision (*i.e.*, given the suspension of the acceptance of AMTS applications,¹⁶ resolution of current applications should be decided on as complete a record as possible) granted Regionet "standing" to file its opposition late, and that as applied to the instant matter, it would grant Havens standing to file his December 14, 2000 petition for reconsideration.¹⁷

4. On October 9, 2001, Havens filed a petition for reconsideration of the *Order on Reconsideration*. On December 17, 2001, the Division released the *Order on Further Reconsideration* denying Havens's October 9, 2001 petition. Once again, the Division rejected Havens's arguments that the Branch's rationale underlying its decision to grant Regionet an extension of time to file an opposition set a precedent of providing standing to an entity that theretofore had not been a party to the proceeding,¹⁸ and that his petition to deny Regionet's channel block A applications should be extended to the channel block B applications.¹⁹ The Division also rejected Havens's argument that three Regionet channel block

¹¹ See *Public Notice*, Report No. 2119 (rel. Nov. 14, 2000).

¹² Regionet Wireless Licensee, LLC, *Order on Reconsideration*, 16 FCC Rcd 16321, 16322-23 ¶¶ 5-7 (WTB PSPWD 2001) (*Order on Reconsideration*).

¹³ 47 C.F.R. § 1.106(b)(1).

¹⁴ *Order on Reconsideration*, 16 FCC Rcd at 16322 ¶ 5.

¹⁵ Letter from Scot Stone, Deputy Branch Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Martin W. Bercovici, Keller and Heckman LLP (Jan. 3, 2001).

¹⁶ On November 16, 2000, the Commission suspended acceptance of applications for new AMTS licenses, applications to modify existing AMTS licenses, and amendments to applications for new licenses or modifications. Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22621 ¶ 76 (2000). With respect to applications that were pending as of November 16, 2000, it suspended the processing of those applications that were mutually exclusive with other applications and were still within the relevant period for filing competing applications. *Id.* at 22622 ¶ 78. On April 8, 2002, the Commission dismissed all AMTS applications the processing of which had been suspended. Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6721 ¶ 90 (2002).

¹⁷ *Order on Reconsideration*, 16 FCC Rcd at 16322-23 ¶ 6.

¹⁸ *Order on Further Reconsideration*, 16 FCC Rcd at 22098-99 ¶ 5.

¹⁹ *Id.* at 22099 ¶ 6.

B applications were mutually exclusive with pending applications he had filed, thereby making him a party to the proceeding.²⁰ Finally, Havens's argument that his petition of December 14, 2000 should be accepted under Section 1.106(c) was rejected by the Division because Section 1.106(c), which describes the circumstances that warrant a grant of a petition for reconsideration on the merits, has no relevance to a procedurally defective petition.²¹

5. On January 17, 2002, Havens filed an application for review of the *Order on Further Reconsideration*. On January 31, 2002, Regionet filed an opposition to the application for review. On February 13, 2002, Havens filed a reply to the opposition.

6. *Discussion.* As an initial matter, we must address Havens's request for leave to file the application for review out of time. The deadline to file an application for review in this proceeding was January 16, 2002, thirty days after the *Order on Further Reconsideration* was released.²² Havens's application for review was electronically filed at 12:00 a.m. on January 17, 2002.²³ Shortly thereafter, he electronically filed an amended application for review; and a request for leave to file untimely the amended application for review or, in the alternative, the initial application for review.²⁴ We agree with Havens that we should permit the late filing of the initial application for review. Havens submitted it on January 16, 2002, and it was received at the Commission less than a minute after the deadline. Moreover, because it was received before the opening of business on January 17, 2002, the late filing caused no delay in our consideration of the matter, and no discernible harm to Regionet. We are not persuaded, however, that late filing of the amended application for review should be permitted. This pleading was submitted after the filing deadline had passed. In addition, Havens has not explained why the corrections and clarifications in the amended application for review could not have been incorporated into the initial application for review. We note that our decision to waive the filing deadline for the initial application for review should not suggest that such waivers are routine.²⁵ Thus, electronic filers who wait until the last minute of the last day of the filing period to submit a pleading should not routinely expect a waiver.

7. Turning to the merits, Havens first argues that the *Order on Further Reconsideration*²⁶ is defective because it relied on facts and arguments presented in Regionet's opposition that were not supported by an affidavit pursuant to Section 1.939(f) of the Commission's Rules.²⁷ We disagree. We

²⁰ *Id.* at 22099 ¶ 7.

²¹ *Id.* at 22099-100 ¶ 8.

²² 47 C.F.R. § 1.115(d).

²³ The application for review was filed electronically pursuant to interim procedures adopted by the Commission in light of the disruption of regular mail delivery and of the processing of other deliveries due to the threat of contamination. *See* Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, FCC 01-345 (rel. Nov. 29, 2001).

²⁴ On January 31, 2002, Regionet filed an opposition to the request for leave. On February 13, 2002, Havens filed a reply.

²⁵ *See, e.g.,* McLeod USA Incorporated, *Order*, 14 FCC Rcd 17659, 17661 ¶ 5 (WTB PSPWD 1999).

²⁶ The application for review purports to address both the *Order on Reconsideration* and the *Order on Further Reconsideration*. *See* Application for Review at 1. A person may file a petition for reconsideration or an application for review of a Commission action, but not both. 47 C.F.R. § 1.104(b). Because, as noted above, Havens already filed a petition for reconsideration of the *Order on Reconsideration*, he may not now file an application for review of the *Order on Reconsideration*. Consequently, we shall address only the *Order on Further Reconsideration*. (As a practical matter, this distinction is of little import, because Havens raises the same arguments with respect to both the *Order on Reconsideration* and the *Order on Further Reconsideration*.)

²⁷ Application for Review at 3.

note that the *Order on Further Reconsideration* did not “rely” on Regionet’s opposition; rather, it evaluated and rejected Havens’s contentions on their own merits *vel non*. Moreover, the Section 1.939(f) affidavit requirement applies only to an opposition to a petition to deny; no such requirement applies to an opposition to a petition for reconsideration.²⁸ Therefore, Section 1.939(f) has no relevance to the instant proceeding.

8. Next, Havens makes a number of arguments for the proposition that the Regionet applications were defective and therefore should never have been accepted for filing, let alone granted.²⁹ Havens argues that because the Regionet applications should never have been accepted for filing, he should be excused for not participating in the earlier stages of the proceeding by filing a petition to deny. The *Order on Further Reconsideration* upheld the Division’s earlier determination that Havens lacked standing to file a petition for reconsideration because he was not a party to the proceeding prior to the filing of the reconsideration petition, and he did not demonstrate either 1) that his interests were adversely affected by the Commission’s grant of the application, and 2) that there was good reason why it was not possible for him to participate in the earlier stages of the proceeding, as required by the Commission’s Rules.³⁰ The *Order on Further Reconsideration* did not address the merits of the Regionet applications. Consequently, we will not address Havens’s arguments concerning the applications. We note, however, that because Section 1.933(b) explicitly states that an application that is accepted for filing may be deemed defective at a later date,³¹ the acceptance of the above-captioned channel block B applications for filing did not in any way excuse Havens from evaluating the applications during the thirty-day petition to deny filing period if he had any potential interest in opposing their grant.

9. Havens continues to argue that the Branch’s rationale underlying its January 3, 2001 decision to grant Regionet an extension of time to file oppositions to two of his petitions for reconsideration set a precedent of providing standing to an entity that heretofore had not been a party to the proceeding.³² Havens has offered nothing in his application for review that would cause us to disagree with the Division’s conclusion that the Branch’s decision allowing Regionet a brief extension of time to file an opposition cannot be used to bolster the procedural validity of Havens’s petition for reconsideration.³³ The issues are unrelated because the Commission’s Rules require that a petitioner for reconsideration demonstrate that it already is a party to the proceeding or explain why it was not possible to participate earlier in the proceeding,³⁴ whereas the Commission’s Rules do not require that a party who files an opposition be an earlier participant in the proceeding. The requirement that Havens failed to meet with respect to his petition for reconsideration simply did not apply to Regionet as an entity filing an

²⁸ Compare 47 C.F.R. § 1.106(g) with 47 C.F.R. § 1.939(f). This is so because a petition for reconsideration, unlike a petition to deny, need not be supported by an affidavit. Compare 47 C.F.R. § 1.106(b) with 47 C.F.R. § 1.939(d). See *Salem Media of Ohio, Inc., Memorandum Opinion and Order*, 10 FCC Rcd 7757, 7757 ¶ 5 (1995); *TV Active, LLC, et al., Order on Reconsideration*, 16 FCC Rcd 18938, 18942 ¶ 9 (WTB PSPWD 2001).

²⁹ Application for Review at 3-7. Specifically, Havens argues that the Bureau erred when it accepted for filing Mobex’s channel block B applications which he contends did not comply with the AMTS service coverage requirement, 47 C.F.R. § 80.475(a), and television protection requirement, 47 C.F.R. § 80.215(h), and were mutually exclusive and late filed with respect to two pending Havens applications. Application for Review at 3-5. Havens further argues that the mere acceptance for filing of the channel block B applications violated the Commission’s general policy against assigning both channel block A and channel block B to the same entity in the same location. *Id.* at 6-7.

³⁰ 47 C.F.R. § 1.106(b)(1).

³¹ 47 C.F.R. § 1.933(b).

³² Application for Review at 7.

³³ *Order on Further Reconsideration*, 16 FCC Rcd at 22099 ¶ 7.

³⁴ 47 C.F.R. § 1.106(a)(1).

opposition to a petition for reconsideration.³⁵ Extending status as a party to a proceeding after a final action has been taken is a different matter from merely granting to an entity that already is a party to the proceeding a brief extension of time to file a responsive pleading.

10. Havens also argues that the Division erred in the *Order on Further Reconsideration*³⁶ when it did not accept his argument that his petition for reconsideration was procedurally valid under Section 1.106(c)(2) of the Commission's Rules.³⁷ Havens's reliance on Section 1.106(c) in the instant matter is misplaced. Section 1.106(c) does not relate to who may file a petition for reconsideration; that is the subject of Section 1.106(b)(1).³⁸ Rather, Section 1.106(c) addresses the circumstances under which an otherwise proper petition for reconsideration may rely on facts not previously presented. That Section 1.106(c)(2) permits such facts to be raised when "consideration of the facts relied on is required in the public interest" does not in any way affect or provide relief from the requirement in Section 1.106(b)(1) that a person seeking reconsideration of a Commission action must either already be a party to the proceeding or explain why earlier participation was not possible.

11. Finally, Havens states that he "asserts all of the fact[s] and arguments in the [December 14, 2000] Petition and his subsequent pleading[s] in this matter," whether or not discussed in his application for review.³⁹ Unlike with respect to certain other filings,⁴⁰ our rules do not permit applications for review to incorporate other pleadings by reference. Rather, the application for review must "concisely and plainly state the questions presented for review," and "specify with particularity . . . the factor(s) which warrant Commission consideration of the questions presented."⁴¹ Consequently, we have addressed only issues set forth in the application for review.

12. *Conclusion.* Because it is in the public interest that all interested entities raise their arguments concerning an application in the earliest stages of a proceeding, those seeking reconsideration that were not parties to the proceeding must explain why they could not have participated earlier in the proceeding.⁴² As noted above, Havens was not a party to the proceeding, and did not provide such an explanation. Because of this procedural defect in his petition for reconsideration of December 14, 2000, we affirm the Division's finding that Havens lacked standing to challenge the grant of the above-captioned applications.⁴³ Therefore, we affirm the Division's denial of Havens's October 9, 2001 petition for reconsideration of the September 7, 2001 dismissal of his December 14, 2000 petition for reconsideration.

13. Accordingly, IT IS ORDERED pursuant to Sections 4(i), and 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5), and Section 1.115 of the Commission's Rules,

³⁵ Compare 47 C.F.R. § 1.106(b)(1) with 47 C.F.R. § 1.106(g).

³⁶ *Order on Further Reconsideration*, 16 FCC Rcd at 22100 ¶ 8.

³⁷ Application for Review at 7-8. See 47 C.F.R. § 1.106(c)(2).

³⁸ See 47 C.F.R. § 1.106(b)(1).

³⁹ Application for Review at 8.

⁴⁰ See 47 C.F.R. §§ 1.923(b), 1.1314(c).

⁴¹ 47 C.F.R. § 1.115(b)(1), (2).

⁴² See *Algleg Cellular Engineering, et al., Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524, 18536-37 ¶ 19 (1999); *Ogden Television, Inc., Memorandum Opinion and Order*, 7 FCC Rcd 3116, 3117 ¶ 5 (MMB VSD 1992).

⁴³ See *Sagir, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 8159 (2001); *Gap Cellular, L.C., Order*, 15 FCC Rcd 4540 (WTB CWD 2000); *Bravo Cellular, Order*, 15 FCC Rcd 4517 (WTB CWD 2000).

47 C.F.R. § 1.115, the Application for Review filed by Warren C. Havens on January 17, 2002, IS DENIED.

14. IT IS FURTHER ORDERED that the Request for Leave to Accept Late-Filing, filed by Warren C. Havens on January 17, 2002, IS GRANTED IN PART AND DENIED IN PART to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary